

Summary of the Testimony of
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Section 271: Telecommunications Act of 1996

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In passing the Telecommunications Act in 1996, Congress linked the attainment of competition in the local telephone market with entry into the lucrative long distance market in §271 of the Act. A Bell operating company that wants to get into long distance must first open its local market to sustainable competition. No company would let go of its exclusive, monopoly franchise willingly -- or easily -- and threats of after-the-fact regulatory penalty or antitrust suits will do little to pry open those local markets. But, the economic carrot of long distance entry is very inviting, and I came up from Texas to tell you it is working -- and it is working well.

Here's how it has worked in Texas. Southwestern Bell serves over three quarters of the phone lines in Texas. Since September, 1996, my fellow commissioners and I have personally presided over the Act's §§251-252 arbitration hearings to set the terms and conditions for over 1,500 terms, conditions and prices that will govern the interconnection contracts between Southwestern Bell and competitors MCI, Teleport, AT&T, MFS and ACSI. Without question, the §271 incentive has been a critical element for SWBT to more fully cooperate in opening its local market. Over the course of our arbitration hearings, SWBT witnesses made it clear that the §271 incentive was highly "motivational."

The Texas Commission has also approved a very strict and detailed implementation schedule, laying out obligations for both SWBT and its competitors on testing, reporting and the like, with a weekly conference call check-in every Monday. We are creating a significant Texas Universal Service Fund to deal with historic embedded high-cost service subsidies.

Texas is one of the first states in the nation to substantially complete the breadth of comprehensive proceedings necessary to kick open the gate for local competition and keep it open. In two short years, we have almost completely replaced a century of regulation with contracts. We were over-optimistic to think the process could be done sooner. It has been tedious and frustrating for all concerned. But for there to be any long-term opening of the nation's local telephone markets, there must be a comprehensive governing framework for that brave new world. To a very significant extent, that framework will be governed by specific contract provisions and use of alternative dispute resolution techniques rather than tariffs and glacial regulatory processes. New entrants

must also be able to depend on the network -- and therefore, the cooperation -- of the incumbent to enter the market successfully. No competitor can or will enter local markets until the key policy and pricing issues have been resolved.

Importantly, those policy and pricing issues have to be resolved in a manner that gives local entrants a realistic chance of market entry in each state, while at the same time compensating the incumbent provider for the use of its facilities. Without a proper balance -- setting prices low enough to allow entry but high enough to fairly compensate the incumbent -- there will be no local competitive alternatives for customers because there will be no meaningful competition.

I have read claims that the §271 process has been ineffective because it is keeping the Bell companies out of the long distance market. The goal of this Act is to get local markets opened. Because I am seeing your desired quid pro quo dynamic taking place first hand, I am here to let you know that §271 is highly effective. It's not just a Texas event either; the level of local competition is growing -- albeit slowly -- in many other states. The most Solomonic policy decisions won't amount to much if there isn't a sufficient incentive on the part of both sides to translate them into competitive reality. If the Texas arbitration awards and implementation schedules are properly handled and followed, I am convinced that this will mean that competitive market opportunity exists. SWBT should receive its §271 approval as a natural consequence.

I believe that Texans will benefit when all willing companies can sell long distance service, but today each Texan has over 150 long distance companies to choose from. The local market is not competitive. Therefore, it is worth the time and effort we are spending to make sure that it gets opened, and more important, that it stays open.

So I urge to assertively reaffirm all parts of the Act you passed two years ago. Section 271 in particular is the best tool you could have given the states to ensure that your goals for competition are met. And, on behalf of the customers of Texas, I thank you for it. I ask you to also strongly support the efforts of the states which are doing the hard work necessary to open their local telephone markets to lasting competition. Under the Act, new companies will get into local service, SWBT will get into long distance, and competition will start to work. Customers will reap the benefits of better pricing, improved service quality and technological innovation. And I'll be out of a job -- and that's a good thing.